

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-1188-MSW-E TCEQ ID: RN105225106 CASE NO.: 34227
RESPONDENT NAME: JOE E. PANAGOPOULOS DBA METRO MATERIALS

Page 1 of 2

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATIONS OCCURRED: 8319 Potranco Road, San Antonio, Bexar County</p> <p>TYPE OF OPERATION: brush, mulch, rock, and dirt recycling facility</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: One complaint was received, alleging that the Respondent was accumulating a large pile of mulch at the Site. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: The complainant has not indicated a desire to protest this action or speak at Agenda. No one other than the ED and the Respondent expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired November 9, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Stephanie Frazee, Litigation Division, MC 175, (512) 239-3693 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Mr. Ross Fife, Waste Enforcement Section, MC 128, (512) 239-2541 TCEQ Regional Contact: Mr. Joel Anderson, San Antonio Regional Office, MC R-13, (210) 403-4010 Respondent: Mr. Joe E. Panagopoulos, 5314 Binz Engleman Road, Kirby, Texas 78219 Respondent's Attorney: Mr. Paul Seals, Guida, Slavich & Flores, P.C., 816 Congress Avenue, Suite 1500, Austin, Texas 78701</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input checked="" type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: June 26, 2008</p> <p>Date of Investigation Relating to this Case: June 27, 2008</p> <p>Date of NOE Relating to this Case: July 17, 2008</p> <p>Background Facts: The EDP RP was filed on December 15, 2008. The EDFARP was filed on December 30, 2008. The Respondent filed an answer and the case was referred to SOAH. Settlement was achieved and the Agreed Order was signed on September 1, 2009.</p> <p>Current Compliance Status: The Respondent corrected violation Nos. 2 and 4. The Respondent has not submitted compliance certification for violation Nos. 1 and 3.</p> <p>MSW:</p> <ol style="list-style-type: none"> Failed to obtain authorization to operate as a recycling facility or properly remove all brush, mulch, sand, and gravel from the Facility [30 TEX. ADMIN. CODE §§ 328.4(a) and 328.5(a) and TCEQ Agreed Order Docket No. 2007-1182-MSW-E, Ordering Provision No. 2.b]. Failed to provide a written cost estimate, in current dollars, showing the cost of hiring a third party to close the Facility by disposition of all processed and unprocessed materials in accordance with all applicable regulations [30 TEX. ADMIN. CODE § 328.5(c)(1)]. Failed to establish and maintain financial assurance for closure of the Facility [30 TEX. ADMIN. CODE § 328.5(d)]. Failed to have a fire prevention and suppression plan that shall be made available to the local fire prevention authority having jurisdiction over the Facility for review and coordination [30 TEX. ADMIN. CODE § 328.5(h)]. 	<p>Total Assessed: \$8,625</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$260/\$8,365</p> <p>The Respondent paid \$260 of the administrative penalty. The remaining amount of \$8,365 shall be paid in 35 monthly installments of \$239 each.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>Findings Order Justification: Indifference to legal duty based on violation of a previous Agreed Order.</p>	<p>Ordering Provisions:</p> <p>The Executive Director recognizes that the Respondent has taken the following corrective measures:</p> <ol style="list-style-type: none"> On January 11, 2009, submitted a fire prevention and suppression plan to local fire officials. On March 16, 2009, submitted and received approval for a closure cost estimate. <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Immediately, cease accepting and processing any municipal solid waste at the Facility until in compliance with this Order. Within 15 days, submit a notice of intent to operate a recycling facility. Within 30 days, submit documentation that demonstrates acceptable financial assurance for the closure of the Facility. <p>Or</p> <ol style="list-style-type: none"> In lieu of Ordering Provision Nos. 2 and 3, within 30 days, remove all accumulated materials and dispose of them at an authorized facility. Within 45 days, submit written certification to demonstrate compliance with either Ordering Provision Nos. 1, 2, and 3, or Ordering Provision Nos. 1 and 4.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

TCEQ

DATES	Assigned	17-Jul-2008	Screening	18-Jul-2008	EPA Due	
	PCW	22-Jul-2008				

RESPONDENT/FACILITY INFORMATION

Respondent	Joe E. Panagopoulos dba Metro Materials		
Reg. Ent. Ref. No.	RN105225106		
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	34227	No. of Violations	4
Docket No.	2008-1188-MSW-E	Order Type	Findings
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Ross Fife
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$5,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	20.0% Enhancement	Subtotals 2, 3, & 7	\$1,000
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Notes	One enhancement due to a previous agreed order.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$3,062	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$12,900	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$6,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	43.8%	Adjustment	\$2,625
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Recommended adjustment to capture the avoided cost benefit associated with the violations.
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Final Penalty Amount	\$8,625
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$8,625
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	No deferral is recommended for Findings Orders.
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PAYABLE PENALTY	\$8,625
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Screening Date 18-Jul-2008

Docket No. 2008-1188-MSW-E

PCW

Respondent Joe E. Panagopoulos dba Metro Materials

Policy Revision 2 (September 2002)

Case ID No. 34227

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN105225106

Media [Statute] Municipal Solid Waste

Enf. Coordinator Ross Fife

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 20%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

One enhancement due to a previous agreed order.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 20%

Screening Date 18-Jul-2008		Docket No. 2008-1188-MSW-E		PCW
Respondent Joe E. Panagopoulos dba Metro Materials				
Case ID No. 34227				
Reg. Ent. Reference No. RN105225106				
Media [Statute] Municipal Solid Waste				
Enf. Coordinator Ross Fife				
Violation Number		1		
Rule Cite(s)		30 Tex. Admin Code §§ 328.4(a), 328.5(a), and TCEQ Agreed Order Docket No. 2007-1182-MSW-E, Ordering Provision 2.b		
Violation Description		Failed to comply with Ordering Provision 2.b. of TCEQ Agreed Order Docket No. 2007-1182-MSW-E. Specifically, the Respondent failed to obtain authorization to operate as a recycling facility or properly remove all brush, mulch, sand, and gravel from the Facility.		
Base Penalty				\$10,000
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual			
	Potential			
				Percent 0%
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
		x		
				Percent 10%
Matrix Notes	100% of the rule requirement was not met.			
Adjustment				\$9,000
				\$1,000
Violation Events				
Number of Violation Events		2		
		125		
		Number of violation days		
mark only one with an x	daily			
	monthly			
	quarterly	x		
	semiannual			
	annual			
	single event			
				Violation Base Penalty \$2,000
Two quarterly events are recommended from the February 23, 2008 effective date to the July 18, 2008 screening date.				
Good Faith Efforts to Comply		0.0% Reduction		\$0
		Before NOV NOV to EDPRP/Settlement Offer		
Extraordinary				
Ordinary				
N/A	x	(mark with x)		
Notes	The Respondent does not meet the good faith criteria for this violation.			
Violation Subtotal				\$2,000
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount		\$12		Violation Final Penalty Total \$3,450
This violation Final Assessed Penalty (adjusted for limits)				\$3,450

Economic Benefit Worksheet

Respondent Joe E. Panagopoulos dba Metro Materials

Case ID No. 34227

Reg. Ent. Reference No. RN105225106

Media Municipal Solid Waste

Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$250	23-Feb-2008	1-Feb-2009	0.94	\$12	n/a	\$12

Notes for DELAYED costs

Estimated cost to file a notice of intent. Date Required is the effective date of the previous agreed order and Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$250

TOTAL

\$12

Screening Date 18-Jul-2008		Docket No. 2008-1188-MSW-E		PCW
Respondent Joe E. Panagopoulos dba Metro Materials				<small>Policy Revision 2 (September 2002)</small>
Case ID No. 34227				<small>PCW Revision June 12, 2008</small>
Reg. Ent. Reference No. RN105225106				
Media [Statute] Municipal Solid Waste				
Enf. Coordinator Ross Fife				
Violation Number		<input type="text" value="2"/>		
Rule Cite(s)		<input type="text" value="30 Tex. Admin. Code § 328.5(c)(1)"/>		
Violation Description		<p>Failed to provide a written cost estimate, in current dollars, showing the cost of hiring a third party to close the facility by disposition of all processed and unprocessed materials in accordance with all applicable regulations. Specifically, the Respondent has not submitted a written closure cost estimate to the TCEQ.</p>		
Base Penalty				<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

OR	Release	Harm	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>		
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>		

Percent

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	
<input type="text"/>	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

Percent

Matrix Notes

100% of the rule was not met.

Adjustment

Violation Events

Number of Violation Events <input type="text" value="1"/>	Number of violation days <input type="text" value="21"/>
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<i>mark only one with an x</i>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="text-align: center;">daily</td><td><input type="text"/></td></tr> <tr><td style="text-align: center;">monthly</td><td><input type="text"/></td></tr> <tr><td style="text-align: center;">quarterly</td><td><input type="text"/></td></tr> <tr><td style="text-align: center;">semiannual</td><td><input type="text"/></td></tr> <tr><td style="text-align: center;">annual</td><td><input type="text"/></td></tr> <tr><td style="text-align: center;">single event</td><td><input type="text" value="x"/></td></tr> </table>	daily	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text" value="x"/>	Violation Base Penalty <input type="text" value="\$1,000"/>
daily	<input type="text"/>													
monthly	<input type="text"/>													
quarterly	<input type="text"/>													
semiannual	<input type="text"/>													
annual	<input type="text"/>													
single event	<input type="text" value="x"/>													

One single event is recommended.

Good Faith Efforts to Comply

	0.0% Reduction									
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;">Before NOV</td> <td style="width: 50%; text-align: center;">NOV to EDP RP/Settlement Offer</td> </tr> <tr> <td style="text-align: center;">Extraordinary</td> <td><input type="text"/></td> </tr> <tr> <td style="text-align: center;">Ordinary</td> <td><input type="text"/></td> </tr> <tr> <td style="text-align: center;">N/A</td> <td><input type="text" value="x"/> (mark with x)</td> </tr> </table>	Before NOV	NOV to EDP RP/Settlement Offer	Extraordinary	<input type="text"/>	Ordinary	<input type="text"/>	N/A	<input type="text" value="x"/> (mark with x)	
Before NOV	NOV to EDP RP/Settlement Offer									
Extraordinary	<input type="text"/>									
Ordinary	<input type="text"/>									
N/A	<input type="text" value="x"/> (mark with x)									
Notes <div style="border: 1px solid black; padding: 5px; min-height: 30px;"> <p>The Respondent does not meet the good faith criteria for this violation.</p> </div>										

Violation Subtotal

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$5"/>	Violation Final Penalty Total <input type="text" value="\$1,725"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,725"/>	

Economic Benefit Worksheet

Respondent: Joe E. Panagopoulos dba Metro Materials

Case ID No: 34227

Reg. Ent. Reference No: RN105225106

Media: Municipal Solid Waste

Violation No: 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$150	27-Jun-2008	16-Feb-2009	0.64	\$5	n/a	\$5

Notes for DELAYED costs

Estimated cost for hiring a third party to estimate closure cost. Date Required is the date of the investigation and Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$150

TOTAL

\$5

Screening Date 18-Jul-2008		Docket No. 2008-1188-MSW-E		PCW														
Respondent Joe E. Panagopoulos dba Metro Materials				<i>Policy Revision 2 (September 2002)</i>														
Case ID No. 34227				<i>PCW Revision June 12, 2008</i>														
Reg. Ent. Reference No. RN105225106																		
Media [Statute] Municipal Solid Waste																		
Enf. Coordinator Ross Fife																		
Violation Number		<input type="text" value="3"/>																
Rule Cite(s)		<input type="text" value="30 Tex. Admin. Code § 328.5(d)"/>																
Violation Description		<div style="border: 1px solid black; padding: 5px;"> <p>Failed to establish and maintain financial assurance for closure of the facility. Specifically, the Respondent could not provide proof of having financial assurance for 50,000 cubic yards of combustible recyclable material at the time of the investigation.</p> </div>																
Base Penalty					<input type="text" value="\$10,000"/>													
>> Environmental, Property and Human Health Matrix																		
OR	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td colspan="2" style="text-align: center;">Harm</td> </tr> <tr> <td style="text-align: center;">Release</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> </tr> <tr> <td style="text-align: center;">Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>				Harm		Release	Major	Moderate	Actual	<input type="text"/>	<input type="text"/>	Potential	<input type="text"/>	<input type="text"/>	Minor	Percent	<input type="text" value="0%"/>
		Harm																
	Release	Major	Moderate															
Actual	<input type="text"/>	<input type="text"/>																
Potential	<input type="text"/>	<input type="text"/>																
>> Programmatic Matrix																		
	Falsification	Major	Moderate	Minor	Percent	<input type="text" value="10%"/>												
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>														
Matrix Notes	<p>100% of the rule was not met.</p>																	
Adjustment					<input type="text" value="\$9,000"/>													
					<input type="text" value="\$1,000"/>													
Violation Events																		
Number of Violation Events		<input type="text" value="1"/>	Number of violation days		<input type="text" value="21"/>													
mark only one with an x	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$1,000"/>															
	monthly	<input type="text"/>																
	quarterly	<input type="text"/>																
	semiannual	<input type="text"/>																
	annual	x																
	single event	<input type="text"/>																
<p>One annual event is recommended.</p>																		
Good Faith Efforts to Comply		0.0% Reduction		<input type="text" value="\$0"/>														
		Before NOV	NOV to EDPRP/Settlement Offer															
Extraordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>															
Ordinary	<input type="text"/>	<input type="text"/>	<input type="text"/>															
N/A	x	(mark with x)																
Notes	<p>The Respondent does not meet the good faith criteria for this violation.</p>																	
Violation Subtotal					<input type="text" value="\$1,000"/>													
Economic Benefit (EB) for this violation			Statutory Limit Test															
Estimated EB Amount		<input type="text" value="\$2,625"/>	Violation Final Penalty Total		<input type="text" value="\$1,725"/>													
This violation Final Assessed Penalty (adjusted for limits)					<input type="text" value="\$1,725"/>													

Economic Benefit Worksheet**Respondent** Joe E. Panagopoulos dba Metro Materials**Case ID No.** 34227**Reg. Ent. Reference No.** RN105225106**Media** Municipal Solid Waste**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]	\$2,500	27-Jun-2007	27-Jun-2008	1.00	\$125	\$2,500	\$2,625
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost of obtaining financial assurance for the facility. Date Required is the beginning date of the violation and the Final Date is the investigation date.

Approx. Cost of Compliance

\$2,500

TOTAL

\$2,625

Screening Date 18-Jul-2008		Docket No. 2008-1188-MSW-E		PCW		
Respondent Joe E. Panagopoulos dba Metro Materials		<i>Policy Revision 2 (September 2002)</i>				
Case ID No. 34227		<i>PCW Revision June 12, 2008</i>				
Reg. Ent. Reference No. RN105225106						
Media [Statute] Municipal Solid Waste						
Enf. Coordinator Ross Fife						
Violation Number	<input type="text" value="4"/>					
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 328.5(h)"/>					
Violation Description	<div style="border: 1px solid black; padding: 5px;"> <p>Failed to have a fire prevention and suppression plan that shall be made available to the local fire prevention authority having jurisdiction over the facility for review and coordination. Specifically, the Respondent did not have a fire prevention plan at the time of the investigation.</p> </div>					
Base Penalty					<input type="text" value="\$10,000"/>	
>> Environmental, Property and Human Health Matrix						
OR	Harm					
	Release	Major	Moderate	Minor		
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>		
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>		
				Percent	<input type="text" value="0%"/>	
>> Programmatic Matrix						
		Falsification	Major	Moderate	Minor	
		<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	
				Percent	<input type="text" value="10%"/>	
Matrix Notes	<div style="border: 1px solid black; padding: 5px;"> <p>100% of the rule requirement was not met.</p> </div>					
Adjustment					<input type="text" value="\$9,000"/>	
					<input type="text" value="\$1,000"/>	
Violation Events						
Number of Violation Events		<input type="text" value="1"/>		<input type="text" value="21"/> Number of violation days		
mark only one with an x	daily	<input type="text"/>				
	monthly	<input type="text"/>				
	quarterly	<input type="text"/>				
	semiannual	<input type="text"/>				
	annual	<input type="text"/>				
	single event	<input checked="" type="text" value="x"/>				
					Violation Base Penalty	
					<input type="text" value="\$1,000"/>	
<div style="border: 1px solid black; padding: 5px; text-align: center;"> <p>One single event is recommended.</p> </div>						
Good Faith Efforts to Comply		<input type="text" value="0.0%"/> Reduction		<input type="text" value="\$0"/>		
		Before NOV	NOV to EDPRP/Settlement Offer			
Extraordinary		<input type="text"/>	<input type="text"/>			
Ordinary		<input type="text"/>	<input type="text"/>			
N/A		<input checked="" type="text" value="x"/>	(mark with x)			
Notes		<div style="border: 1px solid black; padding: 5px;"> <p>The Respondent does not meet the good faith criteria for this violation.</p> </div>				
Violation Subtotal					<input type="text" value="\$1,000"/>	
Economic Benefit (EB) for this violation			Statutory Limit Test			
Estimated EB Amount		<input type="text" value="\$420"/>		Violation Final Penalty Total	<input type="text" value="\$1,725"/>	
This violation Final Assessed Penalty (adjusted for limits)					<input type="text" value="\$1,725"/>	

Economic Benefit Worksheet**Respondent** Joe E. Panagopoulos dba Metro Materials**Case ID No.** 34227**Reg. Ent. Reference No.** RN105225106**Media** Municipal Solid Waste**Violation No.** 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$10,000	27-Jun-2008	1-Feb-2009	0.60	\$20	\$400	\$420
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain a fire prevention plan for a facility containing 50,000 cubic yards of combustible recyclable material. Date Required is the date of the investigation and Final Date is the estimated date of compliance.

Avoided Costs**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				1.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs**Approx. Cost of Compliance** \$10,000**TOTAL** \$420

Compliance History Report

Customer/Respondent/Owner-Operator: CN601927239 PANAGOPOULOS, JOE E Classification: AVERAGE Rating: 40.00
Regulated Entity: RN105225106 METRO MATERIALS Classification: AVERAGE Site Rating: 40.00
ID Number(s):
Location: 8319 POTRANCO RD, SAN ANTONIO, TX, 78251 Rating Date: 9/1/2008 Repeat Violator: NO
TCEQ Region: REGION 13 - SAN ANTONIO
Date Compliance History Prepared: November 12, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: November 12, 2003 to November 12, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Ross Fife Phone: (512) 239-2541

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

Effective Date: 02/25/2008

ADMINORDER 2007-1182-MSW-E

Classification: Major

Citation: 30 TAC Chapter 328, SubChapter A 328.4(a)

30 TAC Chapter 328, SubChapter A 328.5(b)

Description: Mr. Panagopoulos is alleged to have operated an unauthorized recycling facility, in violation of 30 TEX. ADMIN. CODE § 328.4(a) and 328.5(a), as documented during an investigation conducted on April 18, 2007. Specifically, Mr. Panagopoulos was operating a brush and mulch recycling facility, without authorization from the TCEQ.

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 06/05/2007 (561678)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

N/A

- F. Environmental audits.

N/A

- G. Type of environmental management systems (EMSs).

N/A

- H. Voluntary on-site compliance assessment dates.

N/A

- I. Participation in a voluntary pollution reduction program.

N/A

- J. Early compliance.

N/A

- Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
JOE E. PANAGOPOULOS DBA
METRO MATERIALS,
RN105225106**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2008-1188-MSW-E

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Joe E. Panagopoulos dba Metro Materials ("Mr. Panagopoulos") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Panagopoulos, represented by Paul Seals of the law firm of Guida, Slavich & Flores, P.C., presented this agreement to the Commission.

Mr. Panagopoulos understands that he has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Mr. Panagopoulos agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon Mr. Panagopoulos.

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Mr. Panagopoulos owns and operates a brush, mulch, rock, and dirt recycling facility located at 8319 Potranco Road, San Antonio, Bexar County, Texas (the "Facility").
2. The Facility involves the management and/or the disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.

3. During an investigation conducted on June 27, 2008, a TCEQ San Antonio Regional Office investigator documented that Mr. Panagopoulos:
 - a. Failed to comply with Ordering Provision No. 2.b. of TCEQ Agreed Order Docket No. 2007-1182-MSW-E. Specifically, Mr. Panagopoulos failed to obtain authorization to operate as a recycling facility or properly remove all brush, mulch, sand, and gravel from the Facility.
 - b. Failed to provide a written cost estimate, in current dollars, showing the cost of hiring a third party to close the Facility by disposition of all processed and unprocessed materials in accordance with all applicable regulations. Specifically, Mr. Panagopoulos had not submitted a written closure cost estimate to the TCEQ.
 - c. Failed to establish and maintain financial assurance for closure of the Facility. Specifically, Mr. Panagopoulos could not provide proof of having financial assurance for 50,000 cubic yards of combustible recyclable material.
 - d. Failed to have a fire prevention and suppression plan that shall be made available to the local fire prevention authority having jurisdiction over the Facility for review and coordination. Specifically, Mr. Panagopoulos did not have a fire prevention plan.
4. Mr. Panagopoulos received notice of the violations on or about July 22, 2008.
5. The Executive Director recognizes that Mr. Panagopoulos implemented the following corrective measures at the Facility:
 - a. On January 11, 2009, Mr. Panagopoulos submitted a fire prevention and suppression plan to local fire officials, in accordance with 30 TEX. ADMIN. CODE § 328.5(h).
 - b. On March 16, 2009, Mr. Panagopoulos submitted to TCEQ and received approval for a closure cost estimate in accordance with 30 TEX. ADMIN. CODE §§ 328.4(a) and 328.5(a).

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Panagopoulos is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Panagopoulos failed to comply with Ordering Provision No. 2.b. of TCEQ Agreed Order Docket No. 2007-1182-MSW-E by failing to obtain authorization to operate as a recycling facility or properly remove all brush, mulch,

sand, and gravel from the Facility, in violation of 30 TEX. ADMIN. CODE §§ 328.4(a) and 328.5(a) and TCEQ Agreed Order Docket No. 2007-1182-MSW-E.

3. As evidenced by Finding of Fact No. 3.b., Mr. Panagopoulos failed to provide a written cost estimate, in current dollars, showing the cost of hiring a third party to close the Facility by disposition of all processed and unprocessed materials in accordance with all applicable regulations, in violation of 30 TEX. ADMIN. CODE § 328.5(c)(1).
4. As evidenced by Finding of Fact No. 3.c., Mr. Panagopoulos failed to establish and maintain financial assurance for closure of the Facility, in violation of 30 TEX. ADMIN. CODE § 328.5(d).
5. As evidenced by Finding of Fact No. 3.d., Mr. Panagopoulos failed to have a fire prevention and suppression plan that shall be made available to the local fire prevention authority having jurisdiction over the Facility for review and coordination, in violation of 30 TEX. ADMIN. CODE § 328.5(h).
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Panagopoulos for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of eight thousand six hundred twenty five dollars (\$8,625.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Mr. Panagopoulos has paid two hundred sixty dollars (\$260.00) of the administrative penalty. The remaining amount of eight thousand three hundred sixty five dollars (\$8,365.00) of the administrative penalty shall be payable in 35 monthly payments of two hundred thirty nine dollars (\$239.00) each, pursuant to 30 TEX. ADMIN. CODE § 70.9(a). The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be remitted not later than 30 days following the due date of the previous payment. If Mr. Panagopoulos fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of Mr. Panagopoulos to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Panagopoulos to timely and satisfactorily comply with all of the terms of this Agreed Order.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Mr. Panagopoulos is assessed an administrative penalty in the amount of eight thousand six hundred twenty five dollars (\$8,625.00) as set forth in Conclusion of Law No. 7 for violations of TCEQ rules and state statutes. The payment of this administrative penalty and Mr. Panagopoulos's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Joe E. Panagopoulos dba Metro Materials; Docket No. 2008-1188-MSW-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Mr. Panagopoulos shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, Mr. Panagopoulos shall cease accepting and processing any municipal solid waste at the Facility until in compliance with this Agreed Order.
 - b. Within 15 days after the effective date of this Agreed Order, Mr. Panagopoulos shall submit a notice of intent to operate a recycling facility in accordance with 30 TEX. ADMIN. CODE §§ 328.4(a) and 328.5(a).
 - c. Within 30 days after the effective date of this Agreed Order, Mr. Panagopoulos shall submit documentation, including docket number, that demonstrates acceptable financial assurance for the closure of the Facility in accordance with 30 TEX. ADMIN. CODE § 328.5(d) to:

Financial Assurance Team, MC 184
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- d. In lieu of Ordering Provision Nos. 2.b. and 2.c., within 30 days after the effective date of this Agreed Order, Mr. Panagopoulos shall remove all accumulated materials and dispose of them at an authorized facility.
- e. Within 45 days after the effective date of this Agreed Order, Mr. Panagopoulos shall either:
 - i. Submit documentation, including docket number, that demonstrates compliance with Ordering Provision Nos. 2.a., 2.b., and 2.c. to:

Municipal Solid Waste Permits Section, MC 124
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

or

- ii. Submit written certification as described below and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.d. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Joel Anderson, Waste Section Manager
Texas Commission on Environmental Quality
San Antonio Regional Office
14250 Judson Road
San Antonio, Texas 78233-4480

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Panagopoulos. Mr. Panagopoulos is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Mr. Panagopoulos fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Panagopoulos's failure to comply is not a violation of this Agreed Order. Mr. Panagopoulos has the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Panagopoulos shall notify the Executive Director within seven days after Mr. Panagopoulos becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Panagopoulos shall be made in writing to the Executive Director. Extensions are not effective until Mr. Panagopoulos receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Panagopoulos if the Executive Director determines that Mr. Panagopoulos has not complied with one or more of the terms or conditions in this Agreed Order.
7. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
8. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Panagopoulos in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
9. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date is the date of hand-delivery of the Order to Mr. Panagopoulos, or three days after the date on which the Commission mails notice of the Order to Mr. Panagopoulos, whichever is earlier.

Joe E. Panagopoulos dba Metro Materials
Docket No. 2008-1188-MSW-E
Page 8

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

10/9/2009

Date


I, the undersigned, have read and understand the attached Agreed Order in the matter of Joe E. Panagopoulos dba Metro Materials. I represent that I am authorized to agree to the attached Agreed Order on behalf of Joe E. Panagopoulos dba Metro Materials, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on Mr. Panagopoulos's compliance history;
- Greater scrutiny of any permit applications submitted by Mr. Panagopoulos;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against Mr. Panagopoulos;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Mr. Panagopoulos; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution.

Signature


JOE. E. PANAGOPoulos
Name (printed or typed)

Date

Sept 1, 2009

Title